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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,512	12/01/2004	Carol Hobon	262017US6PCT	6972
22850 7590 07/09/2010 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER SIMONE, CATHERINE A				
ART UNIT 1783		PAPER NUMBER		
NOTIFICATION DATE 07/09/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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jgardner@oblon.com

# Office Action Summary

**Application No.**

10/516,512

**Applicant(s)**

HOBON ET AL.

**Examiner**

CATHERINE SIMONE

**Art Unit**

1783

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-20 and 22-42 is/are pending in the application.
- 4a) Of the above claim(s) 24-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-20, 22, 23 and 30-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/15/2010 has been entered.

### ***Withdrawn Rejections***

2. The 35 U.S.C. 112, second paragraph, rejections of claims 33, 40 and 42 of record in the Final Office Action mailed 2/1/2010 have been withdrawn due to the Applicants' amendment filed 6/15/2010.

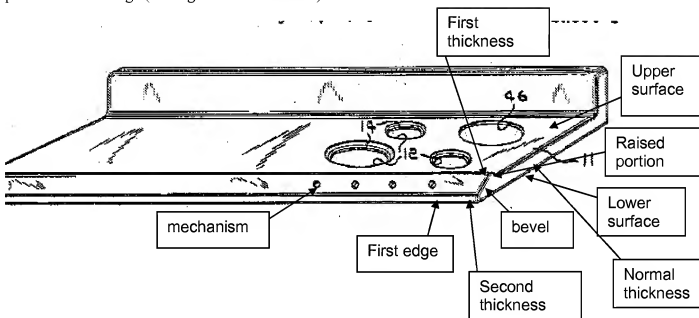
### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 16-20, 22, 23 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morton (US 2,414,162) in view of Hurko et al. (US 3,674,983).

Regarding independent claims 16 and 30, Morton discloses a cooking and/or temperature-maintaining device, comprising one or more heating elements (*col. 4, lines 37-41*), and a top plate (*Fig. 1, top plate 11*) configured to cover the one or more heating elements, the plate including an upper surface and a lower surface, at least one bevel formed at a first edge of the upper surface, the at least one bevel having thickness in a direction perpendicular to the lower surface of the plate decreasing along the bevel in a direction from an interior portion of the plate to the first edge (*see Figure 1 shown below*).



Morton fails to disclose the top plate being made of glass-ceramic.

Hurko et al. teach a smooth surface electric cooktop being made of glass-ceramic in order to provide a smooth cooktop surface that is readily cleanable and that presents a pleasing appearance and does not permit the drainage of spillovers therebeneath (*col. 1, lines 15-26*).

Morton and Hurko et al. are analogous arts, since both teach top plates for cooking devices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the top plate in Morton to consist of glass-ceramic as suggested by Hurko et al. in order to provide a top plate having a smooth surface that is readily cleanable, that presents a pleasing appearance and that does not permit the drainage of spills therebeneath.

Morton also fails to disclose the at least one bevel being 35 mm or more wide, and a ratio of width of the at least one bevel to a height of the at least one bevel being less than 23.3.

It would have been an obvious matter of design choice to modify the bevel in Morton to have a width of 35 mm or more, and a ratio of width of the at least one bevel to a height of the at least one bevel being less than 23.3, since such a modification would have involved a mere change in the size of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. MPEP 2144.04.

Regarding claim 17, Morton discloses the at least one bevel receiving one or more mechanisms configured to control the heating elements (*see Figure 1 shown above and col. 2, lines 44-46*).

Regarding claim 18, Morton discloses the at least one bevel following a raised portion (*see Figure 1 shown above*). However, Morton fails to disclose the thickness of the plate at a top of the raised portion being less than or equal to twice a standard thickness of the plate. It would have been an obvious matter of design choice to modify the top plate in Morton to have the thickness of the plate at a top of the raised portion being less than or equal to twice a standard thickness of the plate, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. MPEP 2144.04.

Regarding claim 19, Morton fails to disclose a thickness of at least 2 mm being left in the plate at a thinnest point of the at least one bevel. It would have been an obvious matter of design choice to modify the top plate in Morton to have a thickness of at least 2 mm being left in the plate at a thinnest point of the at least one bevel, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. MPEP 2144.04.

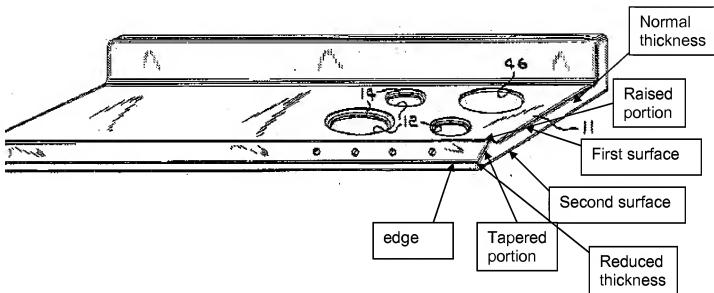
Regarding claim 20, Morton discloses the upper surface bearing the at least one bevel and the lower surface remaining approximately flat where facing the at least one bevel (*see Figure 1 shown above*).

Regarding claim 22, Morton discloses the at least one bevel following a raised portion, the at least one bevel extending over at least one part of a width of the raised portion and a part of a width of the plate outside the raised portion (*see Fig. 1 shown above*).

Regarding claim 31, Morton discloses the thickness of the plate along the at least one bevel tapering from a first thickness to a second thickness, the second thickness being less than a normal thickness of the plate outside the at least one bevel (*see Fig. 1 shown above*).

Regarding independent claims 23 and 33, Morton discloses a cooking and/or temperature-maintaining device, comprising one or more heating elements (*col. 4, lines 37-41*), and a top plate (*Fig. 1, top plate 11*) configured to cover the one or more heating elements, the plate including a first surface and a second surface substantially parallel to the first surface, at least one raised portion formed above the first surface with a first thickness of the raised portion greater than a thickness of the plate outside the raised portion, and at least one tapered portion

following the at least one raised portion tapering from the first thickness of the at least one raised portion to a reduced thickness toward an edge of the plate. (see Figure 1 shown below).



Morton fails to disclose the top plate being made of glass-ceramic.

Hurko et al. teach a smooth surface electric cooktop being made of glass-ceramic in order to provide a smooth cooktop surface that is readily cleanable and that presents a pleasing appearance and does not permit the drainage of spillovers therebeneath (*col. 1, lines 15-26*).

Morton and Hurko et al. are analogous arts, since both teach top plates for cooking devices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the top plate in Morton to consist of glass-ceramic as suggested by

Hurko et al. in order to provide a top plate having a smooth surface that is readily cleanable, that presents a pleasing appearance and that does not permit the drainage of spillovers therebeneath.

Morton also fails to disclose a ratio of width of the raised portion to a height of the raised portion being less than 23.3.

It would have been an obvious matter of design choice to modify the raised portion in Morton to have a ratio of width of the raised portion to a height of the raised portion being less than 23.3, since such a modification would have involved a mere change in the size of the raised portion. A change in size is generally recognized as being within the level of ordinary skill in the art. MPEP 2144.04.

Regarding claim 32, Morton discloses the reduced thickness being smaller than a normal thickness of the plate outside of the at least one tapered portion and the at least one raised portion (*see Figure 1 shown above*).

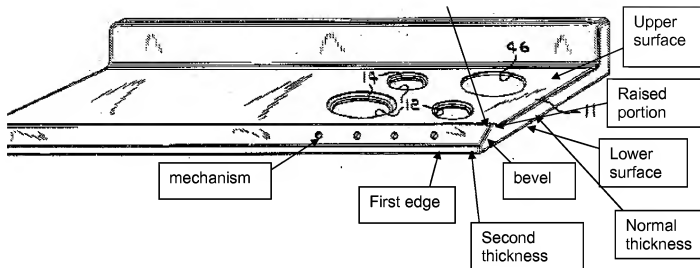
5. Claims 34-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morton (US 2,414,162) in view of Hurko et al. (US 3,674,983) and further in view of Gressenich et al. (DE 19633706).

Regarding independent claims 34 and 41, Morton discloses a cooking and/or temperature-maintaining device, comprising one or more heating elements (*col. 4, lines 37-41*), and a top plate (*Fig. 1, top plate 11*) configured to cover the one or more heating elements, the plate including an upper surface and a lower surface, at least one bevel formed at a first edge of the upper surface, the at least one bevel having thickness in a direction perpendicular to the

First thickness
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lower surface of the plate decreasing along the bevel in a direction from an interior portion of the plate to the first edge (see Figure 1 shown below).



Morton fails to disclose the top plate being made of glass-ceramic.

Hurko et al. teach a smooth surface electric cooktop being made of glass-ceramic in order to provide a smooth cooktop surface that is readily cleanable and that presents a pleasing appearance and does not permit the drainage of spillovers therebeneath (*col. 1, lines 15-26*).

Morton and Hurko et al. are analogous arts, since both teach top plates for cooking devices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the top plate in Morton to consist of glass-ceramic as suggested by Hurko et al. in order to provide a top plate having a smooth surface that is readily cleanable, that presents a pleasing appearance and that does not permit the drainage of spillovers therebeneath.

Morton also fails to disclose the at least one bevel being 35 mm or more wide.

It would have been an obvious matter of design choice to modify the bevel in Morton to have a width of 35 mm or more, since such a modification would have involved a mere change in the size of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. MPEP 2144.04.

Morton further fails to disclose the lower surface of the plate including pegs where facing the at least one bevel.

Gressenich et al. disclose a cooking plate having knobs (pegs) on the lower surface for the purpose of providing increased impact resistance (see abstract and Figs. 3b and 4b).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the plate in Morton to have the lower surface including pegs where the pegs face the at least one bevel as suggested by Gressenich et al. in order to provide the plate with increased impact resistance.

Regarding claim 35, Morton discloses the at least one bevel receiving one or more mechanisms configured to control the heating elements (*see Figure 1 shown above and col. 2, lines 44-46*).

Regarding claim 36, Morton discloses the at least one bevel following a raised portion (*see Figure 1 shown above*). However, Morton fails to disclose the thickness of the plate at a top of the raised portion being less than or equal to twice a standard thickness of the plate. It would have been an obvious matter of design choice to modify the top plate in Morton to have the thickness of the plate at a top of the raised portion being less than or equal to twice a standard thickness of the plate, since such a modification would have involved a mere change in the size

of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. MPEP 2144.04.

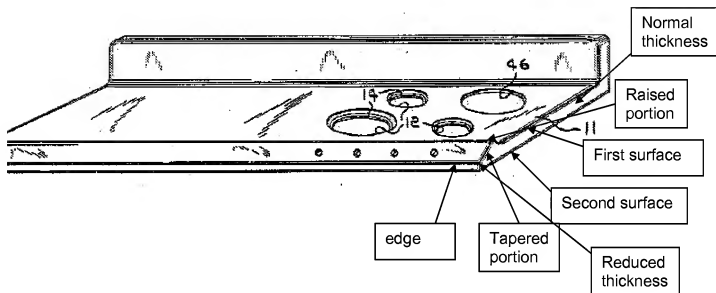
Regarding claim 37, Morton fails to disclose a thickness of at least 2 mm being left in the plate at a thinnest point of the at least one bevel. It would have been an obvious matter of design choice to modify the top plate in Morton to have a thickness of at least 2 mm being left in the plate at a thinnest point of the at least one bevel, since such a modification would have involved a mere change in the size of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. MPEP 2144.04.

Regarding claim 38, Morton fails to disclose a ratio of width of the at least one bevel to a height of the at least one bevel being less than 23.3. It would have been an obvious matter of design choice to modify the top plate in Morton to have a ratio of width of the at least one bevel to a height of the at least one bevel being less than 23.3, since such a modification would have involved a mere change in the size of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. MPEP 2144.04.

Regarding claim 39, Morton discloses the at least one bevel following a raised portion, the at least one bevel extending over at least one part of a width of the raised portion and a part of a width of the plate outside the raised portion (*see Fig. 1 shown above*).

Regarding independent claims 40 and 42, Morton discloses a cooking and/or temperature-maintaining device, comprising one or more heating elements (*col. 4, lines 37-41*), and a top plate (*Fig. 1, top plate 11*) configured to cover the one or more heating elements, the plate including a first surface and a second surface substantially parallel to the first surface, at least one raised portion formed above the first surface with a first thickness of the raised portion

greater than a thickness of the plate outside the raised portion, and at least one tapered portion following the at least one raised portion tapering from the first thickness of the at least one raised portion to a reduced thickness toward an edge of the plate. (see Figure 1 shown below).



Morton fails to disclose the top plate being made of glass-ceramic.

Hurko et al. teach a smooth surface electric cooktop being made of glass-ceramic in order to provide a smooth cooktop surface that is readily cleanable and that presents a pleasing appearance and does not permit the drainage of spillovers therebeneath (*col. 1, lines 15-26*).

Morton and Hurko et al. are analogous arts, since both teach top plates for cooking devices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the top plate in Morton to consist of glass-ceramic as suggested by

Hurko et al. in order to provide a top plate having a smooth surface that is readily cleanable, that presents a pleasing appearance and that does not permit the drainage of spillovers therebeneath.

Morton further fails to disclose the second surface of the plate including pegs where facing the at least one raised portion.

Gressenich et al. disclose a cooking plate having knobs (pegs) on the lower surface for the purpose of providing increased impact resistance (see abstract and Figs. 3b and 4b).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the plate in Morton to have the second surface including pegs where the pegs face the at least one raised portion as suggested by Gressenich et al. in order to provide the plate with increased impact resistance.

#### ***Response to Declaration***

6. The declaration under 37 CFR 1.132 filed 6/15/2010 is insufficient to overcome the rejection of claims 16-20, 22, 23 and 30-42 based upon Morton applied under 35 U.S.C. 103 as set forth in the last Office action because the declaration fails to set forth facts. The declaration is providing opinion evidence which is not being supported by actual proof. There is no factual support being provided in the declaration. "To be of probative value, any objective evidence should be supported by actual proof". See MPEP 716.01(c). In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

***Response to Arguments***

7. Applicant's arguments filed 6/15/2010 have been fully considered but they are not persuasive.

Applicants argue that “neither Morton nor Hurko identify that a ratio of width of a bevel to a height of a bevel is a result effective variable. In fact, neither describes measuring such a ratio, much less that such a ratio achieves a recognized result. Accordingly, the subject matter of amended claims 16, 30 and 33 cannot be considered obvious in view of Morton and Hurko”.

This argument is not deemed persuasive. As pointed out in the 103 rejections above, it would have been an obvious matter of design choice to modify the bevel in Morton to have a ratio of width of the at least one bevel to a height of the at least one bevel being less than 23.3, since such a modification would have involved a mere change in the size of the component (bevel). A change in size is generally recognized as being within the level of ordinary skill in the art. See MPEP 2144.04 (IV). *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. Unless Applicants present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art, amended claims 16, 30 and 33 are unpatentable over Morton in view of Hurko.

Applicants then state that “the enclosed declaration by the inventors describes the problems in the conventional art and how the claimed invention provides unexpected results with

respect to the conventional art. In particular, the inventors described us the conventional art could not include bevels greater than 35 mm wide without weakening the mechanical strength of the plate. In practice, bevels of the order of 12 mm wide were used. In contrast, when a ratio of width of the at least one bevel to a height of the at least one bevel is less than 23.3, bevels 35 mm wide or more can be used without the plates suffering the detrimental effects seen in the conventional art”.

As noted above, the declaration under 37 CFR 1.132 filed 6/15/2010 is insufficient to overcome the rejection of claims 16-20, 22, 23 and 30-42 based upon Morton applied under 35 U.S.C. 103 as set forth in the last Office action because the declaration fails to set forth facts. The declaration is lacking factual support. The declaration is only providing opinion evidence which is not being supported by actual proof. “To be of probative value, any objective evidence should be supported by actual proof”. See MPEP 716.01(c).

Furthermore, Applicants argue “the abstract of Gressenich clearly describes that knobs 3 should *not* be below capacitive sensor switches, and includes a knob-less zone 2 in this area. Accordingly, Gressenich clearly teaches contrary to the proposed combination. It is respectfully submitted that one of ordinary skill in the art would combine Morton and Gressenich such that knobs 3 would *not* be placed below the portion asserted as ‘at least one raised portion’. Accordingly, there can be no suggestion or motivation to combine Morton and Gressenich as proposed”.

This argument is not deemed persuasive. The Examiner acknowledges that Gressenich teaches that knobs 3 should *not* be below capacitive sensor switches, and includes a knob-less zone 2 in this area. However, it is to be pointed out that the raised portion in Morton is located

above the capacitive sensor switches which are provided on the bevel (tapered portion). The raised portion in Morton is located at the top of the bevel (tapered portion) and is above the capacitive sensor switches. Thus, knobs (pegs) would be placed under the raised portion in Morton and not under the capacitive sensor switches when combined with Gressenich, since the raised portion in Morton is located above the capacitive sensor switches. Accordingly, one of ordinary skill in the art would combine Morton and Gressenich. As a result, claims 40 and 42 are unpatentable over Morton in view of Gressenich.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERINE SIMONE whose telephone number is (571)272-1501. The examiner can normally be reached on Monday-Friday 9:30-6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/  
Supervisory Patent Examiner, Art Unit 1783

/CAS/  
Catherine A. Simone  
Examiner, Art Unit 1783